



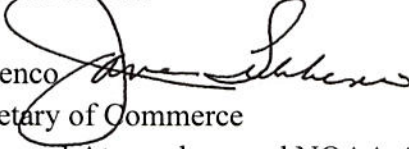
UNITED STATES DEPARTMENT OF COMMERCE  
The Deputy Under Secretary for  
Oceans and Atmosphere  
Washington, D.C. 20230

JUL - 8 2010

MEMORANDUM TO: Lois Schiffer  
General Counsel

Eric Schwaab  
Assistant Administrator  
for Fisheries

Maureen Wylie  
Chief Financial Officer

FROM: Jane Lubchenco   
Under Secretary of Commerce  
for Oceans and Atmosphere and NOAA Administrator

SUBJECT: Corrective Actions to Restore the Financial Integrity of the  
National Marine Fisheries Service (NMFS) Enforcement Asset  
Forfeiture Fund

I have reviewed the recent Inspector General report, and I am deeply troubled by the way the Asset Forfeiture Fund (AFF) has been handled in the past. I recognize that you share these concerns and are already taking corrective actions. Ensuring that the monies in the AFF are properly accounted and used is essential to carrying out our duties as responsible managers of federal dollars and as stewards of coastal and marine resources. Our ability to carry out these duties depends in large part upon the maintenance of proper internal controls.

In order to ensure that the AFF is well managed, I direct you to develop by July 30, 2010, a Corrective Action Plan for implementing proper budgeting, expenditure tracking, accounting, legal opinion, expenditure approvals, and external review to ensure NMFS has adhered to all policies and procedures. Once I have approved this plan, you must implement it immediately. I also direct you by July 30, 2010, to evaluate and report to me whether any personnel actions are appropriate to ensure that those responsible for these problems surrounding the AFF are held accountable. Moving aggressively ahead with all of these corrective efforts should be your top priority.



At the core of our enforcement program going forward must be a firm commitment that monies from the AFF will be budgeted, expended, and accounted for with the same level of care as funding appropriated to NOAA. Congress established the AFF and other enforcement related funds for important purposes, and keeping faith with the American people requires that we assure that we are meeting these purposes.

Actions already taken, which include the transfer of the management of the AFF to NOAA's Comptroller and his approval of all expenditures over \$1000, have corrected some of the fundamental problems pointed out in the latest report. As a consequence, I do not believe that freezing the use of the AFF is warranted. If we were to freeze these funds, it would hinder our ability to implement our ongoing enforcement program and to correct the problems the Inspector General identified with our enforcement nation-wide. Fair and effective enforcement of our nation's fisheries laws and regulations protects fish stocks, marine mammals and the marine environment, and is essential to strong coastal communities with sustainable economies.

#### Prior and Ongoing Actions

On January 21, 2010, the Department of Commerce Inspector General (IG) provided a report that was critical of the policies and practices of NOAA's fisheries enforcement program. In that report, the IG raised questions about the AFF. At that time, I directed you to take actions to improve accountability and transparency in administration of the AFF. Thus, NOAA has already addressed some of the IG's recommendations in the July 1 report, including:

- Shifting oversight of the AFF from NMFS to the NOAA Comptroller
- Requiring a justification and approval from the NOAA Comptroller for any expenditure from the AFF over \$1,000.

In addition, NOAA is also currently in the process of improving the accountability and oversight of the AFF by:

- Developing procedures for routine monitoring of the AFF by an independent certified public accounting firm.
- Obtaining a confirmation of the AFF balance by an independent certified public accounting firm.
- Developing guidance for appropriate use of the AFF in support of enforcement activities.
- Establishing streamlined coding to make it easy to track the collections and expenditures of the AFF.

#### Corrective Action Plan

In order to ensure that the AFF is well managed and has rigorous internal controls, I direct NOAA's Chief Financial Officer to develop by July 30, 2010, and implement as soon as possible thereafter, a further Corrective Action Plan (CAP) to respond to all the recommendations made by the IG to improve the transparency and accountability of the AFF.



The CAP must include specific actions to address each recommendation, the responsible official assigned to the action, and the expected completion date of the corrective action. Staff should coordinate with the IG as needed to clarify any issues or questions regarding the report. Specifically, the CAP must address the following:

- 1) Develop a legal interpretation of the fund-establishing provisions of Magnuson-Stevens Act and other laws that set up funds used by NOAA as part of its enforcement program. The interpretation of fund-establishing laws must be the foundation for how the funds are used to support our enforcement activities. This action will ensure that fines and penalties are collected and used for their intended purposes. It will, for example, clarify whether the AFF may be used for vehicles, vessels, travel, special operations, etc. and if so, under what circumstances.
- 2) Confirm that the guidance developed under the already-commenced action for use of the fund described above conforms to legal interpretation.
- 3) Develop a comprehensive policy regarding the procurement and use of Office of Law Enforcement (OLE) vehicles. The IG report recommends that OLE review its current policy of purchasing vehicles to determine whether it is more cost effective than leasing them. Additionally, the IG report documents a vehicle inventory that exceeds the number of OLE managers, special agents, and enforcement officers that would be authorized to use them. The CAP must provide for determining the appropriate level of inventory, and proper accounting during inventory reduction. A formal policy for enforcement vehicle acquisition and management needs to be developed as part of this effort.
- 4) Review purchase card use by employees of OLE and General Counsel for Enforcement and Litigation (GCEL). The CAP must provide for an examination of all purchase cardholders in OLE and GCEL to determine how to appropriately reduce the number of cardholders. The split and duplicate purchases identified will be examined for root cause, correction, and prevention in the future.
- 5) Provide for an annual public report of collections into and expenditures from the AFF and any other enforcement-related funds that NOAA administers.

In addition, the CAP should take a hard look at the steps that have already been taken to ensure that they are effective. The CAP should review and monitor these actions, and modify them as necessary to address the specific recommendations from the IG related to these efforts.

I further direct the NOAA Chief Financial Officer to work with the NOAA General Counsel and Assistant Administrator for Fisheries on these assignments. All corrective actions should be benchmarked against steps taken by other Departments with asset forfeiture funds for best practices. The entire process, from annual budget operating plans through execution, external review and reporting, should be examined. I have committed to provide the CAP to both the Secretary of Commerce and IG by July 30, 2010.

I believe these actions will greatly assist us in resolving the issues identified by the IG and KPMG and put us on a path for improving the management oversight of and transparency associated with our use of the AFF.

cc: Margaret Spring, Chief of Staff  
Mary Glackin, Deputy Under Secretary  
Bill Broglie, Chief Administrative Officer  
Mitch Ross, Director, Acquisitions & Grants Office  
Jon Alexander, NOAA Comptroller